

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

James Bowers Johnson,

Civil No. 08-4718 MJD/AJB

Plaintiff,

v.

REPORT AND RECOMMENDATION

United States Federal Corporation, et al.,

Defendants.

This matter is before the Court, Magistrate Judge Arthur J. Boylan, on plaintiff's Verified Complaint and Petition to Quash Third Party Summons [Docket No. 1] and defendant United States¹ Response to the Petition to Quash Third Party Summons [Docket No. 2], therein seeking dismissal of the plaintiff's complaint and petition on grounds that the IRS summons at issue in this case was lawfully issued and plaintiff cites no meritorious grounds to preclude enforcement of the summons. Hearing was held by telephone conference call to the United States Courthouse, 316 North Robert St., St. Paul, MN 55101. Olivia Hussey, Esq., U.S. Department of Justice, appeared by telephone on behalf of the defendant. Pro se plaintiff/petitioner James Bower Johnson, made no appearance by telephone or otherwise.²

Based upon the Declaration of IRS Special Agent Nicholas J. Pompei, the court **Finds** that the materials subject to the IRS summons in this matter have been submitted to the

¹ Defendant correctly asserts that the United States is the only proper party defendant in this action because other named defendant agencies and an IRS Special Agent are protected by sovereign immunity and such immunity has not been waived.

² Plaintiff received notice of the hearing and was advised that he could appear by telephone.

agency by third-party North American Banking Company, but have not been examined as a result of the petition now before court; the records cannot be obtained satisfactorily from any other source; and the records relate to financial transactions of James Bowers Johnson during taxable years that are under investigation and will aid in the determination of correct tax liabilities for pertinent years. The court **Further Finds** that the IRS followed the required and appropriate procedural steps for issuance of the summons, including proper notice of service on the plaintiff, and that plaintiff James Bowers Johnson has presented no meritorious objections or grounds for quashing the IRS summons, either by way or complaint/petition or in opposition to the United States' Response and motion to dismiss the action, and that allegations asserted in the plaintiff's Verified Complaint and Petition to Quash Third Party Summons and in his written Opposition to United States' Response to Petition to Quash Third Party Summons are frivolous.

Therefore, **IT IS HEREBY RECOMMENDED** that the motion by the United States be **granted** [Docket No. 2], and that the complaint in this action be **dismissed** [Docket No. 1].

Dated: March 20, 2009

s/Arthur J. Boylan
Arthur J. Boylan
United States Magistrate Judge

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before April 3, 2009.